

225796

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



**STB DOCKET NO. AB-167 (Sub- No. 1190X)**

**CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –  
IN HUDSON COUNTY, NJ**

**REPLY TO NJT 9/19/09 PLEADING  
AMENDMENT OF OFA  
REPLY TO CONRAIL'S NEW ISSUES**

**ENTERED**  
Office of Proceedings  
**SEP 30 2009**  
Part of  
Public Record

1. Now come Eric Strohmeyer, a non-carrier, and James Riffin, a carrier (“Offerors”), who herewith file this Reply to New Jersey Transit’s (“NJT”) September 19, 2009 Pleading.

**BACKGROUND INFORMATION**

2. On August 7-10, 2009, the Offerors filed an Offer of Financial Assistance (“OFA”) to purchase the Parcel C<sup>1</sup> portion of the Line that is the subject of this proceeding. Offerors’ OFA contained the information required by 49 CFR 1152.27.

3. In a Decision served on August 12, 2009, the Board ordered the Offerors to show cause why Parcel C should not be exempted from the Offer of Financial Assistance Procedures. The issues raised by the Board were whether the Line was needed for a valid public purpose and whether there was an overriding public need for rail service on the Line. The Board noted the Offerors in their Offer of Financial Assistance (“OFA”) had not included any shipper statements, no business plan, financial forecasts, or any other evidence to support the assertions of the Offerors.

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<sup>1</sup> Parcel C lies between MP 2.90 and MP 5.17, except for that portion between MP 4.50 (Chapel Ave) and MP 4.90 (Linden Ave).

4. The Offerors filed their Answer to Show Cause Order on September 1, 2009, and supplemented their Motion for Protective Order with their business plan and financial forecasts.

5. In their Answer, the Offerors questioned whether NJT had in fact obtained title to the real estate underlying the Line between MP 3.0 and MP 3.3, since the Offerors could find no evidence indicating this portion of the Line had been conveyed to NJT.

6. On September 11, 2009, at the request of the City of Jersey City, the Offerors moved to amend their OFA by excluding that portion of the Line that lies between MP 4.90 (Linden Ave) and MP 5.17, so that Jersey City could acquire that portion of the Line.

7. On September 11, 2009, Conrail filed its Reply to the Offerors Answer to Show Cause Order. In its reply, Conrail raised a number of new issues.

8. On September 19, 2009, NJT filed its Reply. In its reply, NJT raised a number of new issues.

9. In a Decision served on September 28, 2009, the Board gave the Offerors permission to respond to the new issues that had been raised.

### **RESPONSE TO NJT'S PLEADING**

10. In their Answer, the Offerors provided a copy of two deeds which conveyed to NJT title to that portion of the Line that lies between MP 2.90 and MP 3.1 +/-.

11. NJT provided a copy of a Condemnation instrument which conveyed to NJT that portion of the Line that lies between MP 3.1 and MP 3.3 (Lot 5, Block 2033).

12. The Offerors have been able to verify (A) that NJT does in fact have title to the real estate that underlies that portion of the Line that lies between MP 2.90 and MP 3.3; (B) that the portion of the Line that lies between MP 3.0 and MP 3.3 is being used by NJT (the Hudson Bergen Light Rail maintenance shops are located at that location); (C) that it would be difficult /

impossible to use the portion of the Line that lies between MP 3.0 and MP 3.3 for freight rail purposes without materially adversely affecting the operation of the maintenance shop; (D) that the only shipper on the Line between MP 2.90 and 3.0 (Suydam Partners) has no present interest in rail service; (E) that it would not be cost effective to provide rail service to that portion of the Line that lies between MP 2.90 and 3.0; and (F) that Jersey City could access the Light Rail tracks for its proposed freight circulator system, from the south (by extending freight tracks from MP 3.3, at the south margin of the Light Rail shops, to MP 3.4 (within the Light Rail shops).

13. The Offerors propose to provide freight rail service to MP 3.3. The Offerors have concluded that if Jersey City desires to utilize the Light Rail system for its proposed freight circulator system, then Jersey City, not the Offerors, should be the entity that negotiates that arrangement. Providing freight rail service to MP 3.3 will make it possible for Jersey City to extend a rail line into the southern end of the Light Rail shops, thereby gaining access to the Light Rail system.

14. **For the reasons noted in paragraphs 9 - 12, the Offerors have decided to exclude from their OFA that portion of the Line that NJT has title to, or specifically, that portion of the Line that lies between MP 2.90 and MP 3.3 (the southern property line of the Hudson Bergen Light Rail shops).**

15. **The Offerors now propose to acquire via the OFA process that portion of the Line that lies between MP 3.3 (the southern property line of the Hudson Bergen Light Rail shops) and MP 4.53 (the southern margin of Chapel Avenue). A motion for leave to amend their OFA is being filed concurrently with this pleading.**

### **DIAMOND IN LIGHT RAIL LINE**

16. In their Answer, the Offerors asserted that the portion of the Line that lies between MP 3.3 and MP 3.9, could be reconnected to the National Rail System by installing a diamond in the Light Rail line that crosses the Line at MP 3.9. The Offerors offered a photograph (Exhibit D) depicting a Conrail freight diamond crossing the River Line Light Rail system at CP - 17. The

Offerors argued that installing a diamond in the Hudson Bergen Light Rail (“HBLR”) line where it crosses the Line at MP 3.9, would not materially adversely affect operation of the HBLR line.

17. In paragraph 3 of Joseph North’s Verified Statement, appended to NJT’s reply, he stated:

“It is impractical for the proposed operation to cross these tracks at grade since the HBLR is a **7 day a week, 24 hour a day operation**, currently providing 539 system-wide scheduled revenue passenger trips a day, with close to 200 revenue passenger trips on each of the affected branches with an **operating frequency of 7 to 10 minutes.**”  
(Emphasis added.)

18. Attached hereto as Offerors’ **Exhibit E**, is a copy of the HBLR schedule. It should be noted that the last light rail train passes through MP 3.9 (**Richard St**) at 2:11 am. The earliest train passes through MP 3.9 at 5:17 am. The schedule indicates that for 2.5 hours each morning, every day of the year, freight traffic moving across the HBLR line at MP 3.90 would have no affect on HBLR operations. **None!** As stated in the Offerors Answer, the Offerors propose to interchange rail cars at the Site between 2 am and 5 am. During this operating window, the Offerors would move rail cars across the HBLR line. Contrary to Mr. North’s statement, crossing the HBLR line between 2:30 am and 4:30 am would have **no** impact on operation of the HBLR line.

19. Attached hereto as Offerors’ **Exhibits F-1 and F-2**, are two photographs which depict the two diamonds that permit Conrail’s freight tracks to cross the River Line’s light rail tracks at CP - 17 on the River Line. Exhibit F-2 depicts the derail which prevents freight cars from encroaching onto the light rail tracks, and the signal which controls the diamond.

20. Attached hereto as Offerors’ **Exhibit F-3** is a photograph which depicts the diamond that permits Conrail’s freight tracks to cross the River Line’s light rail tracks at CP - 45 on the River Line. It should be noted, Conrail has a daily local train which operates on the freight line that crosses the River Line tracks at CP - 45.

21. The Offerors argue that installing a diamond in the HBLR line at MP 3.90, then operating on that diamond between 2:30 am and 4:30 am, would have no impact on HBLR operations. The Offerors further argue that installing a diamond at this location, would not be any more burdensome than installing the diamonds in the River Line at CP 17 and 45.

22. All of NJT's other concerns have been mooted by the Offerors' decision to exclude from their OFA, that portion of the Line that lies between MP 3.3 and MP 2.90.

### **NEW ISSUES RAISED BY CONRAIL**

23. Conrail's September 11, 2009 Reply raised a number of new issues. When the Offerors requested permission to respond to NJT's pleading, the Offerors inadvertently failed to request permission to reply to the new issues raised by Conrail. While the Offerors would argue that the new issues raised by Conrail are beyond the parameters contained in the Board's Show Cause Order, if the Board desires the Offerors to address these new issues, then the Offerors herewith request permission to reply to those issues. Permitting the Offerors to address these issues, would provide the Board with a more complete record, which would justify permitting the Offerors to respond to these new issues.

24. Anticipating that the Board will permit the Offerors to address the new issues raised by Conrail, the Offerors provide these responses to Conrail's new issues.

25. Conrail asks the Board to reject the Offerors' OFA because the Offerors did not file a Notice of Intent to File an Offer of Financial Assistance. Neither the statute, nor the Board's regulations, make the filing of a Notice of Intent to File an OFA a condition precedent to filing an OFA. The only purpose for filing a Notice of Intent, is to compel a carrier to provide to the prospective offeror statutorily mandated information. In the instant case, the Offerors already had that information, so had no need to file a Notice of Intent to acquire a second copy of that which they already had. Conrail's argument is specious, and its request should summarily be denied.

26. Conrail objects that Riffin's financial statements did not contain statements from his financial institutions. Financial responsibility is to be determined by the Board, not Conrail. The Board has in its possession financial statements which authenticate the statements made in Riffin's financial statements. Providing the Board with a second copy would be duplicative. In addition, the Board's regulations are quite clear: An Offeror must have, or within a reasonable time will have, the financial resources needed to "fulfill proposed contractual obligations" (pay the net liquidated value of the line). 49 CFR 1152.27(c)(ii)(B). In the instant case, Conrail

declared the net liquidated value to be zero. The Offerors obviously had sufficient financial resources to pay the net liquidated value, for the Offerors actually tendered more than the net liquidated value. A second copy of Riffin's bank statements will be provided if requested.

27. Conrail argued that the portion of the Line that lies between MP 3.3 and 4.5 is needed for a public purpose, to wit: Residential houses. P. 8-9. The only support for this assertion, was a copy of a March 3, 2009 letter from the Mayor of Jersey City. In that letter, the Mayor makes reference to the "Danforth Avenue Transit Village Redevelopment area." Danforth Avenue is parallel to, and one block north of, Linden Avenue, which is at MP 4.9, or some 2,000 feet south of MP 4.5. It would appear that Parcel A (between Linden and Chapel) would be the parcel that may become a part of the Danforth Avenue Redevelopment, **not that portion** of the Line that is north of Chapel.

28. Of particular significance on this point is the September 18, 2009 letter from Mr. William Matsikoudis, Jersey City's in-house counsel. See Offerors' **Exhibit G**. In this letter, Jersey City thanked the Offerors for excluding from their OFA that portion of the Line that is south of Linden Ave (MP 4.9 to MP 5.17). Of particular note, is the omission from this letter of any mention of that portion of the Line that lies between MP 3.3 and MP 4.5 (Chapel Ave). The absence of any request on the part of Jersey City to exempt this portion of the Line from the OFA process, is telling: Jersey City takes no position. Since Jersey City is the only public entity that could advocate for exempting this portion of the Line from the OFA process, and since Jersey City has not requested that this portion of the Line be exempted from the OFA process, there is no legal basis upon which to base exempting this portion of the Line from the OFA process.

29. Conrail argued that the Offerors' proposed use of the Line would be incompatible with residential re-development. P. 9. The Offerors' would agree with this statement. The Offerors would argue that using the Line for residences would be highly incompatible with the **present** and future uses of the properties **adjacent to the Line**. The Line is sandwiched between two active rail lines, is only 120 feet wide, and is located in a heavily industrialized area. Using the Line for industrial purposes comports with the adjacent uses. Using the Line for residences is totally incompatible with the present industrial / rail uses of adjacent properties.

30. Later in this pleading, the Offerors discuss another public use for the Line: As a transload facility for the construction of the new North East Corridor rail tunnels that are being built under the Hudson River in Secaucus, NJ. The Offerors argue a rail-related public use would trump a non-rail public use.

31. Conrail cited 49 U.S.C. 10904 (f)(4)(A) as support for its argument that an OFA offeror must have sufficient financial resources to conduct rail operations for a minimum of two years. The statute states:

“No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.”

32. The statute at issue limits an OFA offeror’s ability to transfer title to the line. The purpose of this statute was to prevent straw-person purchases. Neither the Board nor the Commission has ever interpreted this portion of the statute to mean that an OFA offeror must demonstrate sufficient financial resources to both purchase and operate a line for two years.

33. Conrail argued that the Offerors must demonstrate that they have sufficient financial resources to purchase, install and maintain switches; to place track on the ground; to construct roads; and to clear and re-grade the property. Evidently Conrail did not read Riffin’s pleadings very well, nor has Conrail been following the litigation between Riffin and the State of Maryland. As the Board is well aware, Riffin has the ability to clear and grade property: That is what the litigation is about. The Board has seen photographic evidence of Riffin’s extensive collection of concrete railroad ties, rails, switches and other track material. [Riffin stated that he has 6,000 lf of track material, several switches, and several thousand concrete railroad ties, plus a complete set of maintenance-of-way equipment (ballast tamper, ballast equilizers, undercutter, track liner, Burro cranes, etc.).] Riffin also owns and operates an extensive collection of earth moving equipment: Excavators, track and wheel loaders, bull dozer, motor grader, compactors, tree-chipper, cranes, dump truck, etc. Riffin also has a CDL license, a truck tractor, and numerous semi-trailers. Riffin has the personal ability to furnish, transport and operate whatever equipment is needed to clear, then grade the Line, and to install, then align and elevate whatever track is needed.

34. Appended to the **Unverified** Statement of Robert Ryan was a graphic (Conrail's Exhibit A) depicting properties Conrail had sold. While interesting, the graphic did not depict the boundaries of the **right-of-way**. (It depicted the boundaries of properties Conrail had sold.) The graphic would have been relevant and useful, if it had depicted the extent of the right-of-way.

35. In ¶10 of Mr. Ryan's Statement, Mr. Ryan opined that the line was wooded, below grade at Chapel, and above grade at the Bayonne Industrial Track crossover track at MP 3.2. He further opined that to use the right-of-way, it would have to be cleared, then graded. He stated that he did not know if the Offerors had factored into their business plan the cost of doing this work.

36. Since Riffin has the requisite ability, material and equipment to clear, grade, then lay track on the Line, his cost to do this work would be minimal. Furthermore, the Offerors did factor in a substantial sum for capital improvements. See p. 8 of the Offerors' September 1, 2009 Supplement to Offerors' Motion for a Protective Order.

37. In ¶11 of Mr. Ryan's Statement, he noted an at-grade crossing would have to be installed at Caven Point Road. Since the Offerors' rail car movements would occur between 2:30 am and 4:30 am, an at-grade crossing at Caven Point Road would not disrupt any traffic on that dead-end street. (Caven Point Road dead-ends 200 feet east of the Line's right-of-way.) As discussed *supra*, a diamond in the HBLR line at MP 3.9 would not disrupt operation on the HBLR, since no HBLR trains operate between 2:30 am and 4:30 am.

38. In ¶10 of Mr. Ryan's Statement, he stated that the Offerors had failed to discuss how trucks would access the facility. Since Caven Point Road crosses the Line at MP 3.6, that road would provide truck access to those portions of the Line that lie between MP 3.3 and MP 3.9. Chapel Road also crosses the Line at MP 4.5. Chapel Road would provide truck access to that portion of the Line that lies between MP 3.9 and MP 4.5.

39. In ¶3 of Raymond Gloede's **Unverified** Statement, he **misrepresented** that the Docks Branch had so much rail traffic, switching rail cars from the Bayonne Industrial Track would not be possible. Riffin spent four hours walking the Line on August 5, 2009. During that four hours,



**one local train arrived, then delivered rail cars onto a spur which is located on the east side of the Docks Branch at the same location where the Bayonne Industrial Track connects to the Docks Branch at MP 4.2. One train ever four hours does not equate to ‘heavily congested.’**

**40. On September 11, 2009, Riffin spent four plus hours in the vicinity of the Line. During that four-hour period of time, no trains moved on the Docks branch. Riffin did note a Conrail locomotive was parked on the spur track that is on the east side of the Docks Branch at MP 4.2. Its engine was not running, nor were any Conrail employees observed.**

**41. In ¶4 of Mr. Gloede’s Statement, he misrepresented that there was insufficient tangent track on the Bayonne Industrial Track (“B.I.T.”) at MP 4.2, to accommodate a turn out. Appended hereto as Offerors’ Exhibits F-4 to F-8, are a number of photographs depicting this section of the B.I.T. Exhibit F-5 depicts the B.I.T. looking E to W at MP 4.2. Exhibit F-6 depicts the BIT at MP 4.2 looking W to E. Both demonstrate there is a substantial amount of tangent track on the B.I.T. where the B.I.T. crosses the Line at MP 4.2 (176 feet to be exact - 101 crossties). As a point of reference, the B.I.T. connects to the Docks Branch with a #10 turnout. Likewise, the spur to the east of the Docks Branch, at MP 4.2, also connects to the Docks Branch with a #10 turnout. Both of these turnouts had 62 common ties in them. The distance from the switch point to the last common tie was 108 feet. Installing a #10 turnout in the B.I.T. would require 108 feet of tangent track, which is 68 feet less than what is available. In the remaining 68 feet of tangent track, a diamond crossover could easily be installed. (As a point of reference, the diamond in the River Line at CP - 17, has 18 common ties, and occupies 32 lf of the River Line Light Rail tracks. And that diamond crosses the River Line at a 30 degree angle, rather than at a 60 degree angle, which would exist at a B.I.T. diamond.)**

**42. In ¶4 of Mr. Gloede’s Statement, he noted that there was an “elevation change to the south of the track that would preclude or hinder the installation of a siding.” Exhibits F-7 and F-8 depict the grade of the Line on the north and south sides of the B.I.T. at MP 4.2. On the north side of the B.I.T., Exhibit F-7, the Line’s grade is several feet below the B.I.T. grade. On the south side of the B.I.T., the Line’s grade is three to four feet lower than the B.I.T. immediately adjacent to the B.I.T.. See Exhibit F-4. (The tape measure is wrapped around the tree at the same elevation as the top of rail on the B.I.T. It measured 3 feet from that point on the tree to the**

ground. Twenty feet to the east of this spot, the elevation is four feet lower than top of rail on the B.I.T.) Exhibit F-8 depicts the east margin of the right-of-way (where the fence post can be seen). At this point, the Line's grade is a few inches above the B.I.T. top of rail. As one moves across the right-of-way from E to W on the south side of the B.I.T., the Line's grade does rise 8 feet or so. While Mr. Gloede characterized this heightened elevation as a detriment, the Offerors would characterize this increased elevation as an asset. As stated above, there will be a need to raise the elevation of the Line on the north side of the B.I.T. by several feet. Having excess earth on the south side of the B.I.T. will eliminate the need / cost of obtaining fill material to raise the elevation of the Line on the north side of the B.I.T. According to Riffin's initial calculations, the amount of earth on the Line is just about right, meaning the Offerors will not have to import or export earth from the Line.

### **SHIPPER STATEMENTS**

43. In their Answer, the Offerors stated they had had discussions with several potential shippers regarding using the Line as an aggregates transload facility. Concurrently being filed is a second supplement to the Offerors' Motion for Protective Order. This second supplement contains confidential letters from shippers who have a high desire to use the Line as an aggregates transload facility. See **Exhibit H**.

### **THE TUNNEL PROJECT**

44. Appended to this Reply as Offerors' **Exhibit I**, is the Construction Contract Packages component of The Tunnel Project (a massive public works project in Secaucus, NJ, involving the construction of two new rail tunnels under the Hudson River, and four new rail tunnels under Manhattan, to increase rail capacity on the North East Corridor). This Tunnel Project, and the associated raising of the elevation of the North East Corridor across the Portal Railway Bridge at Portal, will require millions of tons of aggregates (for the millions of yards of concrete that will be needed).

45. The aggregates for The Tunnel Project may either be trucked directly from quarries, or shipped via rail to a nearby transload facility. Trucking this massive quantity of aggregates 50+

miles from nearby quarries would be expensive, and would seriously further congest traffic on New Jersey's already overcrowded highways. A more economical, and environmentally friendly alternative, would be to ship the aggregates via rail to a nearby transload facility, then truck the aggregates the last few miles to Secaucus.

46. The Offerors are aware of two potential transload sites: At Conrail's Elizabeth yard (near Exit 13 on the NJ Turnpike, or about 15 miles from Secaucus), or on the Line in Jersey City (adjacent to Exit 14B on the NJ Turnpike, and just 6 miles from Secaucus). It would be more economical, and more environmentally friendly, to use the Offerors' proposed Jersey City transload site. (At \$1 per minute to truck aggregates, those extra 9 miles to Elizabeth would increase the cost of transporting the aggregates by several Dollars per ton. That amounts to millions of Dollars of additional taxpayer funds.)

47. In *New Jersey Seashore Lines – Operation Exemption – Clayton Companies, Inc.*, Finance Docket No. 35297, filed September 10, 2009, Clayton Sand sought authority to authorize New Jersey Seashore Lines to operate Clayton Sand's line of railroad between Lakehurst and Woodmansie, NJ. This line of railroad has been out of operation for over 20 years. Clayton Sand desires to reinstate rail service on this line, for the sole purpose of moving sand from its Woodmansie Sand quarry to Secaucus for The Tunnel Project. Presently, the only site Clayton Sand can use to unload its railcars of sand, is Conrail's Elizabeth yard. As discussed above, the Offerors' Jersey City site is more economical / more environmentally friendly, than Conrail's Elizabeth site.

48. Conrail obviously would prefer that an aggregates transfer facility be based at its Elizabeth yard. (It would provide Conrail with a significant amount of new revenue.)

49. 49 U.S.C. 10101 (4) states:

**"It is the policy of the United States Government – (4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;" (Emphasis added.)**

50. This OFA procedure invokes the transportation policy enunciated in subparagraph 4 of 49 U.S.C. 10101: Permitting the Offerors to acquire the Line would further competition among rail carriers (between Conrail and the Offerors), and would meet the needs of the public (to have a transload facility as close to Secaucus as possible).

51. If aggregates are trucked to The Tunnel Project, then the closest quarry to Secaucus (located at Pompton Lakes, NJ) will have a competitive advantage. If aggregates can be railed to Offerors' proposed Jersey City transload site, then all quarries located on or near a rail line can compete against the Pompton Lakes quarry. Fostering competition between the various quarries will make it possible for The Tunnel Project to be built at the lowest cost to taxpayers (to meet the needs of the public). It also would make it possible for The Tunnel Project to source its aggregates from more than one source, which would increase reliability and would "spread the wealth."

52. The Offerors argue there is an immediate need for continued rail service on the Line. (The need is immediate, since contracts for The Tunnel Project are presently being negotiated. A quarry's ability to access the Offerors' proposed transload facility will be a significant component of the bid price the quarry is able to offer.)

53. The Offerors calculated that a 20-foot high by 60-foot base pile of aggregates would hold about 40 tons of aggregates per linear foot. The right-of-way between MP 3.3 and MP 4.5 contains 6,300 linear feet of right-of-way. Of this 6,300 lf of right-of-way, approximately 5,000 lf could be used to store aggregates. 5,000 lf at 40 tons per lf equates to 200,000 tons of aggregates. The Site obviously has sufficient room to accommodate an aggregates transload facility of significant size.

## **CONCLUSION**

54. The Offerors have excluded from their OFA those portions of the Line that involve public uses by public entities. (NJT: MP 2.0 to MP 3.3; Jersey City: MP 4.9 to MP 5.17).

55. Jersey City has expressed no opinion regarding using the portion of the Line between MP 3.3 and 4.5 for any prospective future public use.

56. Crossing the HBLR tracks at MP 3.9 via a diamond between 2:30 am and 4:30 am, would have no impact on operation of the HBLR, since no HBLR trains operate during that window of time. Installing a diamond across the HBLR line at MP 3.9 would not be unique, nor difficult, since there are freight diamonds in the River Line light rail tracks.

57. The Offerors propose to use that portion of the Line that lies between MP 3.3 and MP 4.5 for a rail-related public use: To transload aggregates that will be used to build the new North East Corridor rail tunnels under the Hudson River and under Manhattan, and that will be used to raise the North East Corridor Portal railroad bridge. A rail-related public use would have priority over any non-rail related public use.

58. The Offerors have demonstrated that they have the resources to acquire, build, maintain and operate the Line; that the Line can be accessed via trucks from two major roads: Chapel Avenue and Caven Point Road; that there is sufficient acreage to accommodate the Offerors' proposed use of the Line (MP 3.3 to MP 4.5 contains more than 14 acres); that there is an immediate need to use the Line for rail purposes, to wit: As a transload facility for aggregates destined for The Tunnel Project; and that there is sufficient traffic to support the Line (At 400,000 tons per year the Line would be profitable. At millions of tons per year, the Line would be very profitable. Present demand for aggregates from nearby ready-mix plants is greater than 400,000 tons / year. The Tunnel Project will consume millions of tons of aggregates.)

59. There is no legal basis for exempting that portion of the Line that lies between MP 3.3 and MP 4.5 from the OFA procedures, since there is no documented need to use that portion of the Line for any non-rail public use.

60. We, Eric Strohmeyer and James Riffin, declare under penalty of perjury that the foregoing is true and correct. Further, we certify that we are qualified and authorized to file the above pleading.

Executed on: September 30, 2009

Respectfully submitted,

  
Eric S. Strohmeier

  
James Riffin

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of October, 2009, a copy of the foregoing Reply to New Jersey Transit's Pleading was mailed via first class mail, postage prepaid, to the parties of record in this proceeding (Conrail, NJT).

  
James Riffin



**MONDAY – FRIDAY**

$E \times E = Z$

**TONNELLE AVE**  
 Bergentline Ave  
 Port Imperial  
 Lincoln Harbor  
 9th Street  
 2nd Street  
**HOBOKEN TERM.**  
 Pavonia Newport  
 Harsimus Cove  
 Harborside  
 Exchange Place  
 Essex Street  
 Marin Boulevard  
 Jersey Avenue  
 Liberty State Park  
 Garfield Avenue  
 MLK Drive  
**WEST SIDE AVE**  
 Richard Street  
 Danforth Avenue  
 45th Street  
 34th Street  
 22ND STREET



buy, stamp, ride

**Light Rail is a 'proof of payment' system. You must be able to show a valid ticket upon request. All one-way and 10-trip tickets must be time-stamped prior to boarding to make them valid. A monthly light rail pass, a monthly or weekly NJ TRANSIT Rail pass (imprinted with a zone number) or any NJ TRANSIT two-zone (or higher) Bus pass, are also valid to ride. Follow the easy steps below. Passengers without a valid ticket are subject to a fine of up to \$100.**



**U** If you are not using one of the monthly or weekly tickets above, you must purchase (and time-stamp) a ticket just before boarding light rail cars or before entering Prepaid Fare Zones at Hoboken, Port Imperial, Lincoln Harbor, Tonnelle Avenue, Bergenline Avenue, and 2nd, 9th and 22nd Street stations. Ticket Vending Machines (TVMs) are located near entrances or on platforms and at Park & Ride lots at each station. Proof of Payment details are displayed on TVMs and Ticket Information posters at stations. Prepaid Fare Zones are prominently marked with signs as you approach the platform.



**You must time-stamp all one-way tickets and 10-trip tickets in Validators located near TVMs just before boarding light rail cars or entering the Prepaid Fare Zones listed above. To time-stamp your ticket, insert it into the time-stamping device. ~~Weekend and holiday~~ ~~from 11pm Friday~~ ~~to 6am Monday~~ (or day after a holiday).**

**Set aside up to \$230 per month in pre-tax salary and save up to \$1000 annually on transit costs. Employers also save. Call 973-491-7600.**

TICKET TYPE	COST
Adult One-Way	\$1.90
Reduced Fare	.95
One-Zone Bus Transfer	65
Adult 10-Trip Tickets	16.25
Monthly Pass	58.00
Monthly Pass + Monthly Parking Permit	*
2 One-Way Tickets + Daily Parking	*
2 Reduced Fare Tickets + Daily Parking	*

\*Fees are shown on TVM's.

**SAT/SUN/HOLIDAYS**

[illegible]

22ND STREET  
 34th Street  
 45th Street  
 Danforth Avenue  
 Richard Street  
 WEST SIDE AVE  
 MLK Drive  
 Garfield Avenue  
 Liberty State Park  
 Jersey Avenue  
 Marin Boulevard  
 Essex Street  
 Exchange Place  
 Harborside  
 Harsimus Cove  
 Pavonia-Newport  
 HOBOKEN TERM.  
 2nd Street  
 9th Street  
 Lincoln Harbor  
 Port Imperial  
 Bergenline Ave  
 TONNELLE AVE

Ex E-3

**SAT/SUN/HOLIDAYS**

### Ex E-4

TONNELLE AVE  
Bergenline Ave  
Port Imperial  
Lincoln Harbor  
9th Street  
2nd Street  
HOBOKEN TERM.  
Pavonia-Newport  
Harsimus Cove  
Harborside  
Exchange Place  
Essex Street  
Marin Boulevard  
Jersey Avenue  
Liberty State Park  
Garfield Avenue  
MLK Drive  
WEST SIDE AVE  
Richard Street  
Danforth Avenue  
45th Street  
34th Street  
22ND STREET

located at these  
34th Streets in  
the Liberty State  
Museum  
may purchase  
and light rail transit  
pay stations at  
parking is valid  
of payment.  
without the purchase  
is valid from the



**Conrail diamonds crossing NJT Lt Rail  
River Line at CP - 17. Note: Lt Rail  
Concrete ties & wooden ties in Diamond.**



**Conrail diamond crossing NJT Lt Rail  
River Line at CP - 45. Note: Lt Rail  
Concrete ties & wooden ties in Diamond.**



**Derail on Conrail line south of Conrail Diamond  
Crossing NJT Lt Rail River Line at CP - 17.**



**Bayonne I.T. crossing L.V. line at MP 4.20  
Looking E to W showing L.V. grade S of  
crossing to be 3+ ft lower than B.I.T. grade.**



Bayonne I.T. crossing L.V. line at MP 4.20  
 Looking E to W showing 176 ft of tangent track.  
 Note: L.V. grade N & S of crossing track is  
 3-4 feet lower than grade of crossing track.



Bayonne I.T. crossing L.V. line at MP 4.20  
 Looking W to E showing 176 ft of tangent track.  
 Note: L.V. grade N & S of crossing track is  
 3-4 feet lower than grade of crossing track.

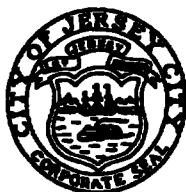


Bayonne I.T. crossing L.V. line at MP 4.20  
Looking S to N showing L.V. grade in middle of  
L.V. R/W to be 2 ft lower than B.I.T. grade.



Bayonne I.T. crossing L.V. line at MP 4.20  
Looking N to S showing L.V. grade on E side  
of L.V. R/W to be slightly higher than B.I.T. grade.

E-G



**CITY OF JERSEY CITY**  
**Office of the Corporation Counsel**

280 Grove Street  
Jersey City, New Jersey 07302  
Telephone: (201) 547-4667  
Fax: (201) 547-5230

Jerramiah Healy, Mayor  
Brian O'Reilly, Business Administrator

Bill Matsikoudis, Corporation Counsel

September 18, 2009

Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20024

ENTERED  
Office of Proceedings  
SEP 29 2009  
Part of  
Public Record



Re: Docket # AB - 167 (Sub No. 1190) X  
Consolidated Rail Corporation  
Abandonment Exemption  
In Hudson County, NJ

225786

Dear Acting Secretary Quinlan:

The City of Jersey City has reviewed the Motion to Amend an Offer of Financial Assistance (OFA) filed by Eric S. Strohmeier and James Riffin dated September 11, 2009.

I wish to advise the Board that the City welcomes this motion to amend since it excludes from the OFA property that the City is in the process of acquiring for the public purpose of relocating its Department of Public Works Facilities. The City specifically requested that such a motion be filed and wishes to express its satisfaction with the fact that Mr. Strohmeier and Mr. Riffin have agreed to exclude from their OFA the property that the City is in the process of acquiring.

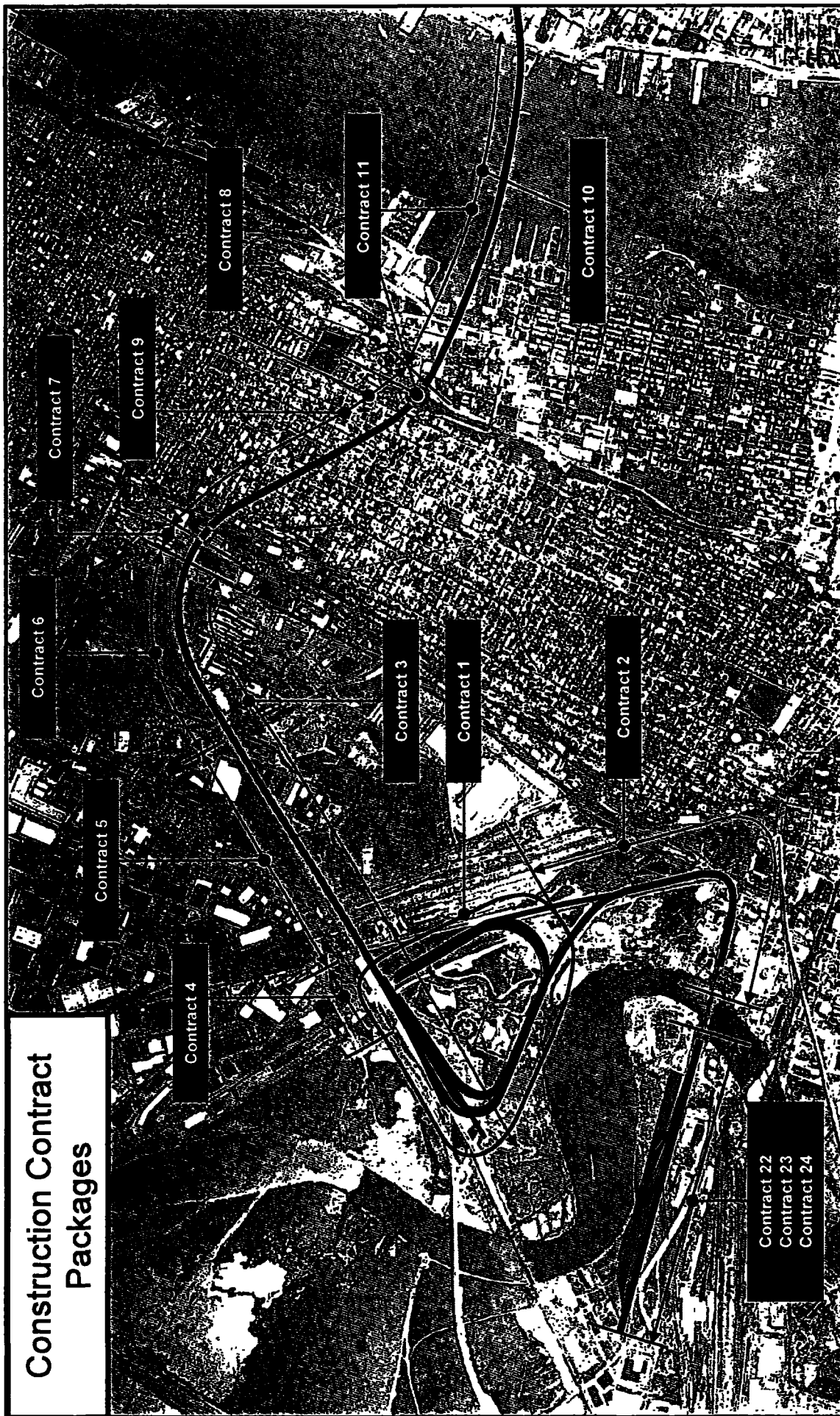
Thank you for your kind consideration in this regard.

Very truly yours,

  
WILLIAM MATSIKOUDIS  
CORPORATION COUNSEL

WM/igp





# Construction Contract Packages

- Contract 1 Loop Track Mainline Connection and FRL Station Connection
- Contract 2 West End Wye Track
- Contract 3 Amtrak Transmission Tower Relocations
- Contract 4 FRL Station Modification & Viaduct up to West of Croxton Yard Bridge
- Contract 5 Croxton Yard Bridge to Secaucus Rd.
- Contract 6 Secaucus Road to Vicinity of Tonelle Ave.
- Contract 7 Tonelle Ave. Underpass

- Contract 8 Palisades Tunnels
- Contract 9 Palisades Tunnels Internal Concrete
- Contract 10 Hudson River Tunnel
- Contract 11 Hoboken Fan Plant
- Contract 22 Kearny Yard Earthwork Management
- Contract 23 Kearny Yard Civil Work
- Contract 24 Kearny Yard Buildings

E.I-1





Contract 12	Manhattan Tunnels	Contract 18	Fan Plant Structure at 33 <sup>rd</sup> & 35 <sup>th</sup> Sts.
Contract 13R	NYPSE & Warrington Interlocking Cavern & Dyer, 33 <sup>rd</sup> , 35 <sup>th</sup> & ADA Shaft Excavation	Contract 19	Station Entrances
Contract 14	Dyer Ave. Fan Plant	Contract 20	Trackwork – At-grade Ballasted Track, Special Track Work and DF Track
Contract 15	Twelfth Ave. Fan Plant, Tunnel Internal Concrete	Contract 21	Project Wide RR Systems
Contract 16R	NYPSE & Interlocking Cavern Concrete Lining and Interior Framing Structure	Contract 25	Furnish and Install all Fans, Fan Controllers, Fan Plant Substations and other Equipment
Contract 17	NYPSE Station Finishes		

Ex. I-2



E+I-3

## THE Tunnel Project - Contract Package Construction Cost Estimate Ranges

### September 2009 Contract Packaging

Description / Packages	Contract No.	Procurement Start	Contract Value
<b>Tonnelle Ave. Underpass:</b> (1) new bridge structure for Tonnelle Ave.; (2) building demolition; (3) site restoration; (4) building alteration; (5) utility construction.	C7	Awarded	Under \$50m
<b>Manhattan Tunnels Design / Build Contract:</b> (1) construction of 160 ft. diameter shaft approximately 160 ft. deep using slurry wall construction; (2) Mixed face starter tunnel breakouts from shaft. (3) 16,500 ft. of bored tunnels through hard rock (4 tunnels); (4) 3 cross passages; (5) utility and sitework.	C12	In Process	Under \$50m
<b>Palisades Tunnel Design / Build Contract:</b> (1) open cut construction from Tonnelle Ave. Bridge to Palisades Portal. (2) 10,400 ft. of hard rock bored tunnels (2 tunnels) with the option for cast in place or segmental liner; (3) waterproofing; (4) 6 cross passages in rock. (5) Construction of 120 ft diameter shaft approximately 100 ft deep using slurry wall.	C8	In Process	Under \$250m
<b>Hudson River Tunnels Design / Build Contract:</b> (1) 14,800 ft. of tunnels mining through soft ground and rock (2 tunnels); (2) 9 cross passages; (3) segmental tunnel liners; (4) access roads; (5) underpinning Willow Ave. Bridge.	C10	2009	Under \$50m
<b>Kearny Yard Earthwork Management:</b> This contract includes: (1) site preparation; (2) construction of 700 ft. of retaining walls; (3) placement of 2 million CY of fill material; (4) construction of site access roads and internal construction roads.	C22	2010	Under \$100m
<b>Amtrak Transmission Line Tower Relocations:</b> Relocation of 3 138kV transmission towers, including deep foundations and monopole structures.	C3	2010	Under \$50m
<b>Excavation of NYPSE and Interlocking Cavern:</b> (1) excavation and support of shafts at Dyer Ave, 33rd St, and 35th St. (2) staged enlargement of previously bored tunnels to form NYPSE and Interlocking cavern, approximately 96ft wide and 90 ft high.	C13R	2010	Under \$50m
<b>Concrete Lining of NYPSE and Interlocking Cavern:</b> (1) Concrete lining of Dyer Ave, 33rd and 35th Street Shafts (2) Concrete lining of NYPSE and Interlocking cavern; 2,200 ft. (3) Concrete lining of 2-550 ft. Warrington Interlocking caverns. (4) Internal framing structures in NYPSE and Interlocking caverns.	C16R	2010	Under \$50m
<b>Loop Track Mainline Connection &amp; FRL Station Connection:</b> (1) 5200 ft. track viaduct and retained fill; (2) 6000 ft. embankment; (3) underpass with retaining wall to NEC; (4) railroad bridge over Penhorn Creek; (5) access bridge over Lower Penhorn Creek, (6) excavation and site grading and capping within landfill.	C1	2011	Under \$50m
<b>NY Penn Station Expansion - Station Architectural and Station Finishes:</b> (1) Construction of finishes for upper and lower level platforms, mezzanine, and connections to existing Penn Station NY with adjoining subway connections; (2) MEP fit out construction; (3) vertical transportation, including stairs, escalators and elevators.	C17	2011	Under \$50m
<b>Station Entrances:</b> Construction of 5 station entrance facilities in New York at 6th, 7th and 8th Ave. along 34th Street and 3 ADA shafts: (1) selective demolition and support of existing structures; (2) drill and blast construction for access tunnels to NYPSE cavern; (3) street and site restoration; (4) utility relocation.	C19	2011	Under \$50m
<b>Frank R. Lautenberg Station To West Of Croxton Yard Bridge Includes FRL Station Modifications &amp; Viaduct Through Station:</b> (1) Station building modifications; (2) new center island platform; (3) 1250 ft. of viaduct structure through station; (4) site work modifications and access road.	C4	2011	Under \$50m
<b>Croxton Yard Bridge To Secaucus Road Includes Construction Of Croxton Yard Bridge, Viaduct &amp; Embankment:</b> (1) foundation construction; (2) 800 ft. of bridge viaduct; (3) 1000 ft. of embankment; (4) 2800 ft. of retained fill; (5) construct of site access roads.	C5	2011	Under \$100m
<b>Secaucus Road To West Side Of Tonnelle Ave.:</b> (1) 2000 ft. bridge viaduct structure; (2) 2300 Ft. embankment; (3) bridge over Conrail/NYS&W; (4) Wick drain installations; (5) surcharge placement and removal; (6) access roadways.	C6	2011	Under \$100m
<b>Twelfth Ave. Fan Plant Internal Concrete Structure and Fit Out:</b> (1) construction of cast in place concrete tunnel, invert slab, with underdrain; (2) Cast in place duct bank bench wall; (3) construct below grade fan plant structure; (4) building superstructure and envelope; (5) MEP fit out construction.	C15	2011	Under \$250m



Ex I-4

## THE Tunnel Project - Contract Package Construction Cost Estimate Ranges

### September 2009 Contract Packaging

Description / Packages	Contract No.	Procurement Start	Contract Value
<b>West End Wye Track:</b> (1) 700 ft. retained fill; (2) 700 ft. bridge structures; (3) 3400 ft. embankment; (4) 2 rail bridge structures (James Ave. and West Side Ave.)	C2	2012	Under \$100m
<b>Trackwork:</b> Construction of 9 miles of trackwork along the tunnel alignment in New York and New Jersey, including Kearny Yard. Elements of the work include: (1) 5.6 miles of ballasted track; (2) 3.4 miles of direct fixation track; (3) special trackwork and ancillary devices.	C20	2012	Under \$250m
<b>RR Systems:</b> Installation, testing and commissioning of all railroad systems, including: (1) traction power; (2) catenary; (3) substations; (4) train signal control; (5) communications; (6) CCTV; (7) passenger communications; (8) tunnel lighting; (9) ventilation control.	C21	2012	Under \$500m
<b>Kearny Yard Civil Work:</b> (1) construction of Koppers Coke Bridge; (2) removal and disposal of surcharge materials; (3) construction of rail structure facilities, including inspection pit, sanding facility; (4) 22,000 ft. of paved site access roads; (5) construction of site utilities.	C23	2012	Under \$250m
<b>Tunnel MEP Finishes and Tunnel Fans at Fan Plant Locations:</b> Work in this contract includes: (1) MEP finishes; (2) five tunnel fans at Fan Plant facilities; (3) fan controllers; (4) electrical substations.	C25	2012	Under \$100m
<b>Palisades Tunnels Internal Concrete and Substation Control Facility:</b> (1) cast in place concrete tunnel, invert slab with underdrain; (2) cast in place concrete duct bank benchwall; (3) concrete vent plenum wall; (4) site grading and utilities, construction of traction power substation control buildings.	C9	2012	Under \$50m
<b>Hoboken Fan Plant, Internal Concrete, Structure and Facility Fit Out:</b> (1) cast in place concrete tunnel, invert slab with underdrain; (2) cast in place concrete duct bank benchwall; (3) concrete vent plenum wall; (4) site grading and utilities; (5) construction of below grade and above fan plant structure; (6) building envelope and fit out construction; (7) MEP fit out construction.	C11	2013	Under \$250m
<b>Dyer Ave. Fan Plant Structure &amp; Fit Out:</b> (1) construction of facility superstructure including internal configurations of multiple levels; (2) 6 story building envelope (2 levels belowgrade) with steel and masonry construction; (3) MEP fit out construction.	C14	2013	Under \$50m
<b>33rd and 35th Street Fan Plant Structure and Fit out:</b> (1) construction of facility superstructure, including internal configurations of multiple levels; (2) five-story building envelope (2 levels below grade) with steel and masonry construction; (3) MEP fit out construction.	C18	2013	Under \$100m
<b>Kearny Yard Buildings:</b> Work in this contract includes: (1) construction of employee facility; (2) trainwasher facility; (3) outdoor lighting; (4) catenary structures.	C24	2013	Under \$100m

## **SEPTEMBER 30, 2009 VERIFIED STATEMENT OF JAMES RIFFIN**

1. My name is James Riffin. I am over the age of 18 and I am qualified and authorized to make this Verified Statement.
2. On September 22, 2009, I took the photographs which have been included in the Offerors' Exhibit F. The photographs have not been altered and accurately depict what is in the photographs at the time the photographs were taken.
3. Photographs F-1 and F-2 depict the Conrail freight line crossing the New Jersey Transit ("NJT") River Line light rail tracks at CP -17. There were 18 common ties in the Diamond, which occupied about 32 linear feet of the River Line. The freight line crossed the River Line at about a 30 degree angle.
4. Photograph F-3 depicts the Conrail freight line crossing the NJT River Line light rail tracks at CP -45. The freight line is used daily by a Conrail local train.
5. Photographs F-4 to F-8 depict the Bayonne Industrial Track ("BIT") where it crosses the Lehigh Valley right-of-way at MP 4.2. The tangent portion of the BIT at this location was 176 feet long and contained 101 crossties spaced at 21 inches on center.
6. The BIT is connected to the Docks Branch via a #10 turnout. It was 108 feet from the switch point to the last common tie. There were 62 common ties.
7. Immediately east of where the BIT connects to the Docks Branch is another #10 turnout that connects a spur track to the Docks Branch. This #10 turnout was 108 feet from the switch point to the last common tie. There were 62 common ties.
8. The elevation of the Lehigh Valley right-of-way north of the BIT was about 2 feet lower than the top of rail of the BIT.
9. The elevation of the Lehigh Valley right-of-way immediately south of the BIT was 3 to 4 feet lower than the top of rail of the BIT. The elevation of the Lehigh Valley right-of-way starting about 20 feet south of the BIT ranged from a few inches higher than the top of rail of the BIT at the E and W margins of the Lehigh Valley right-of-way, to about 8 feet higher than the top of rail of the BIT in the middle of the Lehigh Valley right-of-way.
10. I estimated the amount of earthen material that would need to be removed from the Lehigh Valley right-of-way south of the BIT, to bring the grade of the Lehigh Valley right-of-way to the same elevation as the BIT, and estimated the amount of earthen material that would be needed to elevate the Lehigh Valley right-of-way north of the BIT, to the same elevation as the BIT. My first estimate was that no earthen material would need to be imported or exported.
11. I personally own and operate heavy construction equipment, to wit: Two series 200 hydraulic excavators, one Michigan 4-yard wheel loader, one Komatsu 3-yard track loader, one

D-3 dozer, one Dresser motor grader, one single drum and one double drum compactors, one Gradal, one 8" capacity tree chipper, one dump truck, two skid-steers with numerous attachments, including forks and a brush hog, three back hoes, one hydraulic 30-ton rough terrain crane, one 65-ton hydraulic all-terrain crane, one grappel-equipped boom truck, one asphalt paving machine, a Leica Total Station accurate to 0.2 seconds, one Volvo tandem truck tractor, 5 semi-trailers, three of which are expandable to 80 feet, one 50-ton capacity low-boy semi-trailer.

12. I personally own and operate maintenance-of-way equipment, including a track undercutter, a tamper, a track liner, two ballast equilizers, two scarifiers, two 30-ton Burro cranes, a spike inserter and two spike removers. I also have a complete assortment of hand-held track maintenance tools.

13. In addition to the 10+ miles of track I own in Allegany County Maryland, I also own, and presently store in the Baltimore area, approximately 5,000 lf of 100-lb rail, 1,000 lf of 130-lb rail, several switches, together with sufficient quantities of associated other track material (tie plates, anchor bars, spikes, bolts, etc.), and several thousand concrete railroad ties.

14. I have personally operated, and I am proficient at operating, all of the equipment I own. I have done earth-moving / construction activities for more than 20 years.

15. I have a Class A Commercial Driver's License, and I am licensed to operate any combination of commercial vehicles. I have a Heating, Ventilation, Air Conditioning and Refrigeration Master's License. I can stick and MIG weld. I own a number of larger electric welders, with capacities up to 800 amps.

16. I certify under the penalties of perjury that the above is true and correct to the best of my knowledge information and belief.

Executed on September 30, 2009


  
James Riffin

STATE OF MARYLAND, BALTIMORE COUNTY, to wit:

I HEREBY CERTIFY, that on this 30<sup>th</sup> Day of September, 2009, before me, a Notary Public of said State, personally appeared James Riffin, known to me or satisfactorily proven to be the person whose name is subscribed to the within Verified Statement, and who acknowledged that he executed the same, for the purposes therein contained.

AS WITNESS my hand and notarial seal.

My commission expires: Aug 28, 2010

  
Notary Public

